

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption ) NOTICE OF PUBLIC HEARING ON  
of NEW RULES I through XXV, ) PROPOSED ADOPTION  
pertaining to the establishment of Peace )  
Officers Standards and Training (POST) )

TO: All Concerned Persons

1. On May 19, 2008, at 2:00 p.m., the Department of Justice will hold a public hearing in the Conference Room of the Board of Crime Control, 3075 North Montana Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail abovingdon@mt.gov.

3. The rules as proposed to be adopted are as follows:

NEW RULE I ORGANIZATION (1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.

(2) The council membership is defined in 44-4-402, MCA.

(3) As used in [NEW RULES I through XXV], the definitions set forth in 44-4-401, MCA, apply.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE II MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) Public safety officers must meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, as defined in 44-4-401, MCA, all public safety officers shall:

(a) be a citizen of the United States or may be a registered alien if unsworn;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;

(e) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; and

(g) possess a valid driver's license if driving a vehicle will be part of the officer's duties.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE III REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED BEFORE THE EFFECTIVE DATE OF THIS REGULATION

(1) A peace officer already serving under a permanent appointment prior to the effective date of this regulation shall not be required to meet any of the requirements for certification as a condition of tenure or continued employment, nor shall failure to fulfill such requirements make them ineligible for any promotional examination or consideration for promotion for which they would otherwise be eligible.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE IV CODE OF ETHICS (1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.

(2) The procedure for administration of the code of ethics is as follows:

(a) each applicant for certification will attest to this code of ethics and the oath shall be administered by the head of the public safety agency for which they serve, or by the Montana Law Enforcement Academy (academy) administrator or designee;

(b) the applicant and the administrator administering the oath will sign two copies of the public safety code of ethics; and

(c) one copy will be retained by the applicant and the other copy will be retained in the applicant's academy student file, which will be available for inspection by the council staff at any reasonable time.

(3) The oath of the public safety officers' code of ethics is:

"My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged.

"I shall perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct.

"I will enforce or apply all laws and regulations appropriately, courteously, and responsibly.

"I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person.

"Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise.

"I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and shall disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties.

"I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice.

"I will be responsible for my professional development and will take reasonable opportunities to improve my level of knowledge and competence.

"I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE V PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council shall have the power to recall, sanction, suspend, or revoke any or all certificates upon good cause as determined by the council.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VI GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal, state, tribal, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers shall complete the required basic training as set by the council.

(3) Public safety officers shall attest that they subscribe to the code of ethics as prescribed in [NEW RULE IV].

(4) Prior to issuance of any certificate, the public safety officer shall have completed the designated combinations of education, training, and experience as computed by the point credit hour system established annually by the council.

(5) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies shall be determined by the council, and requires notice of application for credit.

(6) Applicable experience in any public safety agency will be considered by the council when determining the minimum standards for certification.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VII REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to [NEW RULES V and VI], the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation shall have completed:

(i) the probationary period prescribed by law, but in any case have a minimum of one year experience with the agency;

(ii) the basic course or the equivalency as defined by the council; and

(iii) application for the basic certificate.

(b) Public safety officers hired before the effective date of this regulation shall have:

(i) completed the probationary period prescribed by the employing agency, and shall have served a minimum of one year with the present employing agency;

(ii) completed the basic course at the academy, or an equivalency as defined by the council; or

(iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.

(c) Public safety officers with out-of-state experience and training formerly employed by a designated federal, state, tribal, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) shall have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training and service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the academy. The council will require those who fail an equivalency program to successfully complete the basic course at the academy;

(iii) whose training and service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course; and

(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.

(d) All of the training and equivalency requirements for the basic certificate

must be accomplished within one year of the initial appointment.

(e) Council may grant a one time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) absence of reasonable access to the basic course, or the legal training course; and/or

(iii) an unreasonable shortage of personnel within the department.

(f) A public safety officer who has been issued a basic certificate by the council and whose last date of employment as a public safety officer was less than 36 months prior to the date of the person's present appointment as a public safety officer is not required to fulfill the basic educational requirements as set forth in these rules.

(g) If the last date of employment as a public safety officer is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency test administered by the academy. If the public safety officer fails the basic equivalency test, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within 36 months of the last date of employment.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VIII REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) shall possess the discipline specific basic certificate; and

(c) shall have four years experience and 200 job related POST training hours.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE IX REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the advanced certificate:

(a) shall possess the discipline specific intermediate certificate; and

(b) shall have eight years experience and 400 job related POST training

hours.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE X REQUIREMENTS FOR PUBLIC SAFETY OFFICER  
SUPERVISORY CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the supervisory certificate:

(a) shall possess the discipline specific intermediate certificate;  
(b) shall have successfully completed a 40 hour POST approved management course; and  
(c) shall have served satisfactorily as a first level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities, and most commonly is the rank of sergeant.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XI REQUIREMENTS FOR PUBLIC SAFETY OFFICER  
COMMAND CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the command certificate:

(a) shall possess the discipline specific supervisory certificate;  
(b) shall have completed a professional development course or courses cumulating a minimum of 400 hours or more of POST approved management or leadership topic matter; and  
(c) shall have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XII REQUIREMENTS FOR PUBLIC SAFETY OFFICER  
ADMINISTRATIVE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the administrative certificate:

(a) shall possess the discipline specific advanced and command certificate;  
and  
(b) shall have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) The administrative or management level is a senior level administrative position for which commensurate pay is authorized; occupied by an individual who,

in the upward chain of command, is either responsible for administering the agency or has broad administrative authority, or is subject to assignment of such responsibilities; and most commonly is a chief, assistant chief, sheriff, undersheriff, warden, or deputy warden of the agency.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XIII QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) For the purposes of [NEW RULES XIV, XVI, and XIX], the following definitions apply:

(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;

(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;

(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and

(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

(2) The council is responsible for the approval of all public safety officer training programs:

(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and

(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.

(3) The course requirements for POST approved training include:

(a) meeting the requirements contained in (2), the requirements for trainee attendance and performance, and the instructor requirements;

(b) being based upon generally recognized best practice;

(c) comporting with Montana laws and court decisions; and

(d) being at least two hours or more in length.

(4) Approval requirements for training courses presented or sponsored by public safety agencies are:

(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and

(b) each course must be advertised and open to all public safety agencies.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XIV REQUIREMENTS FOR TRAINEE ATTENDANCE AND

PERFORMANCE IN POST APPROVED COURSES (1) Trainees enrolled in any POST approved course shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement.

(2) Each trainee shall be required to attend all sessions of any training course in which they are enrolled, except for absences approved by the course coordinator. No trainee shall receive credits if absences exceed 10% of the total hours for the course.

(3) Any trainee who fails to comply with these rules pertaining to attendance, performance, and behavior shall be denied credits.

(4) Failure to comply with the rules contained herein or other guidelines may result in either denial of course approval or a revocation of course approval.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XV THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course shall be prescribed by the council.

(2) Students in any basic public safety officers' course shall be required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council shall annually review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last annual review upon written application from the administrator of the academy providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XVI INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) Persons providing POST approved training courses and employed by public safety agencies must be certified by the council.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) three years of public safety experience;

(b) education or training in the specific field, subject matter, or academic discipline to be taught;

(c) must have successfully completed a 40 hour minimum instructor development course or equivalent approved by the council;

(d) must have an endorsement from the applicant's agency head to deliver a specific lesson plan pertaining to a discipline; and

(e) must submit the specific lesson plan which includes performance objectives, instructional strategies, and complete course content.



(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

- (a) must possess a primary instructor certificate;
- (b) must successfully complete a minimum 40 hour curriculum design and development course or equivalent approved by the council;
- (c) must have an endorsement from a professional instructor and POST director, or designee attesting to the applicant's competencies; and
- (d) must have endorsement from applicant's agency head.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the person shall apply to the council on a form approved by the council, and shall meet the following requirements:

- (a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; and
- (b) must have endorsement from the POST director or designee and agency administrator.

(5) The council will certify approved instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor shall be listed in an official register of the council, and each subject that each instructor is certified to teach shall be noted in said register.

(6) Initial primary and master instructor certificates shall be issued for a period of 24 months. At the end of the initial time period, certificates may be renewed for an additional 24 months, providing the instructor has remained current in the applicable discipline. This may be accomplished through continuing education and by actively instructing the course(s).

(7) After four years of continuous certification, master instructors may be recertified for a four year period.

(8) The council may deny applications for instructor certification for failure to satisfy the required qualifications. The council may recall, suspend, or revoke primary and master certificates at any time for good cause to ensure the quality of the training programs. In addition, any primary and master instructor who has not instructed during a certification period shall be required to reapply for original certification.

(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.

(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to [NEW RULE XXV].

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XVII. REQUIREMENTS FOR DESIGNATED INCIDENT

COMMAND CERTIFICATION (1) Designated incident command certification is established for the purpose of promoting standardized incident management and streamlined interagency mutual aid during multi-day or multi-jurisdictional emergencies through the use of a state or federally recognized Incident Command System (ICS). An officer assigned to an ICS command or general staff position is usually a senior officer, trained within a specific area of expertise, who is routinely assigned within a jurisdiction to coordinate or take charge of specific aspects of emergency response or extraordinary circumstances.

(2) The council shall issue incident command certificates designated by:

(a) emergency response specialty; and

(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to [NEW RULES V and VI], applicants for an award of a designated incident command certificate:

(a) shall possess an intermediate certificate;

(b) shall have completed an approved ICS course;

(c) shall have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;

(d) shall be trained within a specialized area of emergency response;

(e) shall have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and

(f) shall be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XVIII. CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION

(1) Coroner education shall be conducted by the council as prescribed in 7-4-2905, MCA.

(2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:

(a) the basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners must complete 16 hours of advanced training at least once every two years.

(a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or denying an extension include, but are not limited to:

- (i) illness of the coroner/deputy coroner or an immediate family member;
- (ii) absence of reasonable access to the coroner's advanced course; or
- (iii) an unreasonable shortage of personnel;

(c) The council may not grant an extension to exceed 180 days; and

(d) The council will not grant extensions after the expiration of the two year time limit.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XIX DEFINITIONS As used in [NEW RULES XX through XXV], the following definitions apply:

(1) "Certification" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.

(2) "Complainant" means:

(a) any person or entity making a complaint against a public safety officer to the council; or

(b) the POST executive director acting upon any credible knowledge, information, or belief.

(3) "Council" means the public safety officer standards and training council as created by 2-15-2029, MCA.

(4) "Director" means the executive director of the public safety officer standards and training council, as established by these rules.

(5) "Formal proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.

(6) "Governmental unit" means any governmental entity which is statutorily empowered with administration, supervision, or oversight over a public safety agency or officer.

(7) "Informal proceedings" means proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding.

(8) "Presiding officer" means the chair of the council or their designated representative, who shall regulate the course of hearings held by the council.

(9) "Public safety officer" means an officer, as defined in 44-4-401, MCA.

(10) "Respondent" means the public safety officer against whom a complaint has been made or their legal representative.

(11) "Revocation" means the permanent cancellation by the council of a public safety officer's certification.

(12) "Sanction" means a consequence or punishment for a violation of [NEW RULE XX], or the accepted norms of being a public safety officer.

(13) "Suspension" means the annulment, for a period of time set by the council, of a public safety officer's certification.

- (14) "Uncertifiable officer" means a public safety officer who:
- (a) is employed as a public safety officer, but does not possess the basic certificate, as described in [NEW RULE VII];
  - (b) has been the object of a complaint filed pursuant to [NEW RULE XXI];
  - (c) has been afforded the process which is due under law; and
  - (d) has been found to be subject to suspension or revocation pursuant to [NEW RULE XX].

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XX GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The council shall consider and rule on any complaint made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

- (a) willful falsification of material information in conjunction with official duties;
  - (b) a physical or mental condition that substantially limits the person's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated by reasonable accommodation;
  - (c) addiction to or the unlawful use of controlled substances or other drugs;
  - (d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the profession;
  - (e) the commission of a felony, an offense which would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
  - (f) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;
  - (g) willful violation of the code of ethics set forth in these rules;
  - (h) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;
  - (i) failure to meet the minimum standards for employment set forth in these rules;
  - (j) failure to meet the minimum training requirements provided in these rules;
- or
- (k) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the agency's or officer's reputations.

(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXI PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION (1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.

(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.

(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:

(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);

(b) name and place of employment of the person complained against; and

(c) a full and complete description of the incident.

(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.

(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:

(a) file a formal complaint with the council on their own behalf;

(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;

(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;

(d) accept the voluntary surrender of a certificate issued by the council; or

(e) for good cause, recommend closure of the investigation of a complaint.

(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXII COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION (1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.

(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.

(3) In formal proceedings, the respondent must file an answer, or be in

default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.

(4) Service shall be made in a manner consistent with Montana law.

(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.

(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.

(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.

(8) A representative from the office of the Attorney General may present the case of the complainant.

(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.

(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXIII DECISION AND ORDER (1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.

(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.

(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXIV RECORD OF PROCEEDINGS (1) The record shall consist of the items enumerated in 2-4-614, MCA, and a audio recording of oral

proceedings shall be the official record of the proceedings.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

NEW RULE XXV APPEALS (1) If requested by the respondent, an appeal may be made to the Montana Board of Crime Control pursuant to [NEW RULE IV in MAR Notice No. 23-14-189]. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.

AUTH: 2-15-2029, MCA  
IMP: 2-15-2029, MCA

RATIONALE AND JUSTIFICATION: The department is proposing the new rules because the 60th Legislature enacted SB 273, which establishes a Montana POST Advisory Council to replace the POST Advisory Council currently under the Montana Board of Crime Control.

4. Concerned persons may submit their data, views, or arguments either or in writing at the hearing. Written data, views, or arguments may also be submitted to: Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [abovingdon@mt.gov](mailto:abovingdon@mt.gov), and must be received no later than 5:00 p.m. on May 22, 2008.

5. Ali Bovingdon of the Department of Justice has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice is available through the department's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in (4) above, or may be made by completing a

request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on December 10, 2007, by regular mail.

By: /s/ Mike McGrath  
MIKE McGRATH  
Attorney General  
Department of Justice

/s/ Ali Bovingdon  
ALI BOVINGDON  
Rule Reviewer

Certified to the Secretary of State on April 14, 2008.